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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- - - - - X
PAUL D. CEGLIA,) 10-CV-569(RJA)
Plaintiff)
vs.)
MARK ELLIOT ZUCKERBERG and) Buffalo, New York
FACEBOOK, INC.,) November 27, 2012
Defendants.) 2:11 p.m.
- - - - - X

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

AUDIO RECORDER: Sandra D. Wilson

TRANSCRIBER: Christi A. Macri, FAPR, RMR, CRR, CRI
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(Proceedings recorded by electronic sound recording, transcript
produced by computer).

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P R O C E E D I N G S

* * *

THE CLERK: Please be seated. On the record, Ceglia vs. Zuckerberg and Facebook. Everyone is appearing via telephone conference.

Appearing for the plaintiff are Paul Argentieri and Dean Boland.

Appearing for the defendants are Orin Snyder, Alex Southwell, Tom Dupree, Terry Flynn.

And representing Facebook is Colin Stretch.

We're here for oral argument on plaintiff's counsel's motion to withdraw, and that's plaintiff's counsel Mr. Boland.

MAGISTRATE JUDGE FOSCHIO: Good afternoon, everyone. If I sound a little nasally it's because I am. Bad head cold here that just won't quit, so I have to work around it.

Can I just divert to a related issue? And if I don't deal with it up front, I'll forget to do so. And that is the continuing request of the defendants for disclosure of Mr. Boland's -- hello? Mr. Boland's letter that was submitted for *in camera* inspection in support of his motion to withdraw dated October 30th connected to the motion, which is docketed under number 579.

We also have a renewed request for disclosure that was recently filed by the defendants by letter, and that has been docketed as -- excuse me, I'm looking for it. I know the docket

1 number, I just can't put my finger on the letter. Sandra, is it
2 up here somewhere?

3 THE CLERK: It's 612.

4 MAGISTRATE JUDGE FOSCHIO: It's number 612 in which the
5 defendants renew their request for disclosure and the letter is
6 dated November 12th, and I believe -- let me just double check --
7 Mr. Boland has us copied and received a copy of each of those
8 letter requests.

9 Is that right, Mr. Boland? You've received them,
10 correct?

11 MR. BOLAND: Yes, Your Honor, I did.

12 MAGISTRATE JUDGE FOSCHIO: Good. With other matters that
13 we had to attend to, including several recently pending motions by
14 the parties, particularly the defendants for relief, which we've
15 resolved, didn't get to the request issue; and I find now that
16 with this latest renewed request by virtue of the November 12th
17 letter, docketed as number 612, that it apparently is something
18 that I can't escape.

19 The defendants just simply will not -- unless they've
20 changed their mind as of November 12th, it looks like they are
21 insisting on a ruling.

22 Is that correct, Mr. Snyder?

23 MR. SNYDER: Yes, Your Honor. We are requesting a
24 ruling. And I would note that our motion is presently unopposed
25 as to disclosure of the *in camera* communication because Mr. Boland

1 has not --

2 MAGISTRATE JUDGE FOSCHIO: Well, that's -- that's exactly
3 what -- that's exactly what I'd like to focus on because if I
4 don't do it now, I'll forget. I think it's growing in importance,
5 shall we say?

6 I did not put a scheduling order on the request. It, of
7 course, was not a formal motion denominated as such, but because,
8 as I say, of the -- I don't want to say that in any way the Court
9 didn't think the defendants were serious the first time, but if
10 any observer would have thought so, that certainly -- that
11 observer would be disabused by virtue of the strength of the
12 defendants' November 12th letter.

13 I think I just need to clarify that maybe -- I don't
14 want to be unfair here. Maybe the lack of a scheduling order
15 emanating from the Court caused Mr. Boland to think that the Court
16 was not going to address the issue. And rather than get tangled
17 up in unnecessary -- unnecessary disputes with Mr. Boland about
18 this, I would like to know, Mr. Boland, whether in point of fact
19 you do acquiesce in the request for disclosure or whether you'd
20 like to have a formal opportunity to oppose it before I go any
21 further with the request, with the matter.

22 Could you comment on that, please, Mr. Boland?

23 MR. BOLAND: Yes, Your Honor. I appreciate the
24 opportunity to comment. I as well was involved in the flurry of
25 activity during that time, as you pointed out.

1 I would oppose the release of the letter and I think
2 that the defendants' acquiescence to my withdrawal diminishes
3 their legitimate interest in the personal and professional
4 commentary that's in that letter, which serves no purpose to the
5 case and no purpose for the public for it to be disclosed.

6 And they're not opposing my withdrawal, so it seems a
7 moot issue, although the Court correctly points out that they seem
8 aggressively interested in the letter nonetheless.

9 So I would accept the Court's invitation to formally
10 oppose that in whatever document the Court would order me to
11 submit.

12 MAGISTRATE JUDGE FOSCHIO: Right.

13 MR. BOLAND: I just think it's an unnecessary exercise at
14 this point given their lack of opposition to my withdrawal.

15 MR. SNYDER: Your Honor, if I can just respond? I think
16 procedurally there may be some -- Your Honor in entry 582 set
17 forth a schedule with respect to Mr. Boland's motion to withdraw.

18 In opposition to Mr. Boland's motion we set forth our
19 position and requested disclosure of the improper *in camera*
20 submission, and Mr. Boland had an opportunity under Your Honor's
21 order, which is docketed at number 582, to reply.

22 And he had full and fair opportunity to reply to our
23 very clear position that disclosure be ordered, and he failed to
24 do so.

25 We think that separate and additional motion practice at

1 this stage is not in the interest of justice or will promote any
2 kind of economy or fairness to the defendants. Mr. Boland's been
3 on notice now for a long time of our position with respect to the
4 disclosure.

5 And, most fundamentally, Your Honor, there's no legal
6 basis unless -- for the suppression or *in camera* receipt of this
7 letter unless it is necessary to preserve attorney-client
8 relationship or privilege.

9 And so if that is not the content of the submission, and
10 Mr. Boland doesn't claim that his submission contains any client
11 communications -- to the contrary, as he did here that the
12 information relates to some personal or professional issues -- we
13 don't think further briefing is necessary, and nor do we believe
14 that this is a moot issue at all.

15 There is a compelling public interest, which we seek to
16 vindicate. There is an interest in -- in the disclosure of that
17 communication. There may well be such proceeding with respect to
18 the filing of this litigation, and it's not proper, we believe,
19 for an attorney to represent a client, withdraw for unstated
20 purposes, and we would be severely prejudiced if we did not have
21 access to the content of that letter in terms of our potential
22 rights and remedies in the future with respect to this matter.

23 So we think that there's a specification for disclosure
24 and that to force Facebook to incur yet additional costs in a new
25 round of briefing where there is no even claimed attorney-client

1 privilege is not necessary given the local rules of this court,
2 given the Second Circuit law and, indeed, you know, and, indeed,
3 given Your Honor's own precedent which we cited, which was the
4 *Diamond D* case, which makes clear that absent confidential matter
5 or work product, requests for withdrawal cannot be filed under
6 seal.

7 We would also note the curious -- not curious. We would
8 note, Your Honor, the timing of Mr. Boland's withdrawal.
9 Mr. Ceglia was arrested by the federal authorities on
10 October 26th. Three days later Mr. Boland was quoted by the *New*
11 *York Times* saying, "If I thought this was a fraud, I would have
12 bailed out two seconds later." But the very next morning he moved
13 to withdraw purportedly for some personal, professional reason
14 that he now doesn't want us to know about.

15 So we think, Your Honor, this is an easy case for
16 disclosure and that no additional briefing is necessary.

17 MAGISTRATE JUDGE FOSCHIO: Thank you, Mr. Snyder. I'm
18 not trying to invite plenary oral argument about this whole thing
19 right now. I'm just simply trying to, in fairness, respect
20 everyone's right to be heard.

21 Now, before I go any farther, I failed to point out for
22 the record, since apparently Mr. Boland did not copy the
23 defendants on his e-mail, which arrived today at 12:46, attaching
24 a copy -- we haven't received the original -- a copy of a letter
25 to me in further support *in camera*, in further support of his

1 motion to withdraw, with at least one or two attachments.

2 And so my comments regarding the first -- I'll refer to
3 it as the Boland letter, i.e., the one that accompanied the
4 original -- the pending motion to withdraw, that is to say, the
5 one of October 30th. Now we have two letters *in camera* in support
6 of such motion.

7 I want to draw the defendants' attention to that in case
8 they -- in case that fact -- I apologize, Mr. Snyder, for not
9 making this point before you started your statement. I'm assuming
10 everything you said pertains to both letters?

11 MR. SNYDER: Yes, Your Honor. Obviously, I was unaware
12 of the *ex parte* communication.

13 MAGISTRATE JUDGE FOSCHIO: I apologize. You know, on me
14 as they say these days.

15 MR. SNYDER: Well, obviously I would say on Mr. Boland
16 since he did not -- since he was engaged in *ex parte*
17 communication, Your Honor.

18 MAGISTRATE JUDGE FOSCHIO: Well, I mean, it came as a bit
19 of a surprise and, obviously, because of the apparently continuing
20 nature of the disputes, the issue, the request for disclosure, I
21 felt compelled to lay it on the record here.

22 I'm sure Mr. Boland doesn't take any, you know, take
23 exception to that, but I want to comment on the issue of whether
24 or not there was an acquiescence to the plaintiff's -- defendants'
25 request by virtue of the text of the scheduling order.

1 And I think, you know, if I had to do it over, I might
2 have parsed it a little better than I did because it didn't strike
3 me that the request in the -- in the defendants' responding papers
4 to the motion constituted a motion.

5 So you can see the ambiguity there. There simply was
6 not a scheduling order directed to that request. So it's not --

7 MR. SNYDER: Your Honor?

8 MAGISTRATE JUDGE FOSCHIO: Yeah?

9 MR. SNYDER: I would agree with that, Your Honor. The
10 only qualification I would say is if the question is, did
11 Mr. Boland have a full and fair opportunity to be heard? He had
12 an opportunity to reply to our opposition, and a large part of our
13 opposition was a request for disclosure --

14 MAGISTRATE JUDGE FOSCHIO: Well -- no, no, see, that's
15 exactly the problem, at least in my humble opinion, the request
16 for disclosure is a -- it gets a little tangled here -- is a
17 separate issue.

18 There was no indication that you were hobbled or
19 handicapped in your -- I'm talking to the defendants --
20 defendants' ability to oppose the motion to withdraw by not having
21 the document.

22 You follow?

23 MR. SNYDER: I do.

24 MAGISTRATE JUDGE FOSCHIO: So, therefore, as I say, I
25 think it's on the Court, as it were, that I didn't grasp -- well,

1 I should have grasped that Mr. Boland might not have realized that
2 the issue of whether the documents should be disclosed to you was
3 alive in the sense that the Court was going to reach it, but with
4 or without his response.

5 So if I had it to do over, I would have issued, I think,
6 a separate scheduling order saying, well, now the defendants have
7 made a request, the Court will treat it as a motion for
8 disclosure, exercising the general common law public right to
9 access to court documents along the lines that you very
10 well-articulated, as you always do, Mr. Snyder, concepts with
11 which the Court is well familiar.

12 And raising what I thought was the intriguing question
13 of whether Rule 5 of the local rules, which enunciate that
14 fundamental principle, color necessarily the administration, if
15 you will, of local Rule 83.2(d)(1) permitting such *in camera*
16 submissions.

17 So I just should have and would have, and now will
18 informally invite Mr. Boland to formally respond to it. I don't
19 see that it impacts -- at least I hope it doesn't impact us
20 reaching the merits of the pending motion to withdraw.

21 If it does, we'll find out momentarily about that.

22 But now I would like to -- and, Mr. Boland, you may be
23 right. I hadn't thought of your point so quick -- always so
24 quick with your responses, if not correct, but certainly quick --
25 that by virtue of their failure to oppose, although there is a

1 little condition hanging there, as you know, the motion to
2 withdraw, they have waived their right to seek disclosure.

3 That's an interesting concept, and I'm not prepared to
4 make a ruling from the bench. That's certainly something you can
5 argue in the written submission that I'm about to request that you
6 submit, and then of course the defendants will have a chance to
7 tackle that as well.

8 So the question now, I think, if -- because I would like
9 to get to the main event here, which is the motion to withdraw --
10 is what would be a reasonable time? And I'm thinking here not
11 more than -- not more than ten days, Mr. Boland, for you to
12 respond. I would think offhand you would be able to do it much
13 more quickly, but I don't want to be unreasonable in setting a
14 scheduling order on what I will refer to as the defendants'
15 request for disclosure of the Boland letters, in the plural.

16 What would be reasonable time to respond, Mr. Boland, in
17 writing?

18 MR. BOLAND: I think seven days, Your Honor.

19 MAGISTRATE JUDGE FOSCHIO: Seven days, okay. Seven days
20 from tomorrow, Sandra is what date? Hang on a second, we'll put a
21 specific date on it so everybody's tuned in here.

22 THE CLERK: That would be --

23 MAGISTRATE JUDGE FOSCHIO: Say again.

24 THE CLERK: December 4th.

25 MAGISTRATE JUDGE FOSCHIO: December 4th, Mr. Boland.

1 How's that sound?

2 MR. BOLAND: Yes, Your Honor, that would be fine.

3 MAGISTRATE JUDGE FOSCHIO: Okay. The plaintiff's --

4 Mr. Boland's response shall be due not later than December 4th.

5 And then for the defendants' reply, Mr. Snyder? Hello?

6 MR. SNYDER: Yes, Your Honor, by Friday the 7th.

7 MAGISTRATE JUDGE FOSCHIO: December the 7th for the
8 defendants' reply. Oral argument will be at the Court's
9 discretion.

10 And we've already done some preliminary looking at this
11 issue. It's -- I would just say it's very intriguing, to say the
12 least. So I look forward to your written responses and that's it.
13 I think that's good. Thank you for bearing with me on that one.

14 Now, before we go any farther with the main motion to
15 withdraw, I need for -- either Mr. Boland and/or Mr. Argentieri to
16 tell me formally that the Court's direction that a copy of the
17 first Boland letter, i.e., the -- and by the way, I suppose -- now
18 that I think about it, Mr. Boland may have gotten tangled up here
19 a little bit, I'll explain why in a moment, I hope not --
20 October 30th letter, pursuant to the requirement of the local rule
21 be served on your client, Mr. Ceglia, via Mr. Argentieri because
22 at the time you indicated to the Court you didn't know how to
23 reach your client, he then being in custody.

24 Of course, a call to the Federal Defender's Office would
25 have helped you along that line. But can either Mr. Boland or

1 particularly Mr. Argentieri represent to the Court on the record
2 that the October 30th Boland letter was served on Mr. Ceglia?

3 MR. BOLAND: Yes, Your Honor. Mr. Boland here. I can
4 confirm that I sent it by certified mail to where he was detained
5 at the time, and he signed the certified mail receipt card and I
6 received it back shortly thereafter.

7 MAGISTRATE JUDGE FOSCHIO: Okay. So you didn't use the
8 procedure that I had outlined, which was to serve it on
9 Mr. Argentieri?

10 MR. BOLAND: I would have used that procedure if I
11 couldn't approach Mr. Ceglia directly, but I went ahead and did
12 some of my own investigation and found where he was and so I sent
13 it to him directly.

14 I also copied Mr. Argentieri on the letter. And the
15 letter -- the supplement that the Court received today, I
16 actually discussed on the phone with Mr. Ceglia prior to
17 submitting that. So he's aware of the contents of that, I read
18 him the letter.

19 MAGISTRATE JUDGE FOSCHIO: Well, could you just follow-up
20 on that by actually serving him with a copy, and give the Court
21 something that can be docketed that will confirm such, please?

22 MR. BOLAND: I will do that immediately after the call,
23 Your Honor.

24 MAGISTRATE JUDGE FOSCHIO: Thank you. All right, good.

25 All right, so the next obvious question is, therefore,

1 can somebody speaking for -- I'm assuming at this point, even
2 though you have this pending motion to withdraw and you've
3 spoken to Mr. Ceglia, he's received the October 30th letter --
4 I would prefer to hear from Mr. Argentieri because he's
5 remaining counsel of record on this question, and that is
6 does or does not Mr. Ceglia oppose Mr. Boland's motion to
7 withdraw?

8 MR. ARGENTIERI: If I could, Your Honor? I believe that
9 Mr. Ceglia, if he was in the -- present in the courtroom, would
10 oppose Mr. Boland withdrawing from the case. He prefers that
11 Mr. Boland stay in the case pending the Court's recommendation on
12 the motion to dismiss.

13 MAGISTRATE JUDGE FOSCHIO: Did I hear you correctly --
14 this is Mr. Argentieri; is that right? Mr. Argentieri, you're on
15 the phone?

16 MR. ARGENTIERI: I've had conversations with Mr. Ceglia.
17 It's my understanding, and Mr. Boland can correct me if I'm wrong,
18 it's my understanding that his position if he had to submit one to
19 the Court, he would prefer that Mr. Ceglia -- or Mr. Boland remain
20 on the case.

21 MAGISTRATE JUDGE FOSCHIO: Well, that's a little
22 different than what you said a second ago, which was that he
23 opposes the motion.

24 MR. ARGENTIERI: I'm sorry, no. I'm sorry. He does --
25 I'm sorry. That's my fault. If I said that, I apologize.

1 No, he wants Mr. Boland to stay on the case.

2 MAGISTRATE JUDGE FOSCHIO: So he opposes this motion,
3 Mr. Argentieri?

4 MR. ARGENTIERI: As far as an oral communication to me,
5 yes.

6 MAGISTRATE JUDGE FOSCHIO: Well, why hasn't he
7 communicated such to the Court? I mean, that was the whole
8 purpose of this proceeding, to give him an opportunity to be
9 heard on whether he opposes the motion or agrees with it.
10 That's why he was -- that's why the local rule requires that
11 these documents be served on the plaintiffs, the parties, so
12 they have a full opportunity to understand what their lawyer is
13 trying to do and to let the Court know whether they agree or
14 disagree.

15 As you all know, that is -- that is one of the -- in
16 fact, it's criteria number 10 under the applicable Rules of
17 Professional Conduct, Rule 1.16 of the Judiciary Act, judiciary
18 laws appendix enacting the Rules of Professional Conduct.

19 Subsection 10 says one of the factors is the client
20 knowingly and freely assents to the termination of the employment
21 as a criteria warranting withdrawal.

22 Obviously, the Court has discretion, but I'm -- even
23 though -- and I guess the next related question is,
24 Mr. Argentieri, you're remaining in the case?

25 MR. ARGENTIERI: Well, that's a good question, Your

1 Honor. Now that you have a scheduling order, I just was served
2 today with a subpoena to appear on December 3rd at the grand jury
3 against Mr. Ceglia.

4 So that's a complicated answer to give --

5 MR. SNYDER: Your Honor, this is Mr. Snyder. We -- the
6 defendants here are flabbergasted that Mr. Argentieri and
7 Mr. Boland both are aware and have been aware without disclosure
8 to this Court or the defendant that their client opposes this
9 motion.

10 Had we been so informed, as Mr. Argentieri and
11 Mr. Boland were required to do, that obviously would have
12 informed -- of the opposition, we would have cited authority
13 obviously concerning what happens when the client opposes
14 counsel's motion to withdraw.

15 So I think that as an initial matter, the failure to
16 disclose this information to the Court and to the defendants has,
17 you know, multiplied the proceedings, has caused additional
18 inefficiency and waste because now we're going to have to go back
19 to the drawing board to a certain extent, having just learned this
20 for the first time, query whether we ever would have learned it if
21 Your Honor hadn't asked the direct question.

22 Secondly, the notion that there are, you know, parallel
23 proceedings has no real bearing here, Your Honor. Civil
24 litigation proceeds throughout the United States, proceeds in
25 parallel to related, but obviously independent criminal

1 proceedings.

2 We'll get to it at the appropriate time, but
3 Mr. Argentieri or Mr. Boland continue to frustrate or delay these
4 proceedings because of occurrences in the parallel, but
5 independent criminal action --

6 MAGISTRATE JUDGE FOSCHIO: Well, Mr. Snyder, can I
7 interrupt?

8 MR. SNYDER: Sure.

9 MAGISTRATE JUDGE FOSCHIO: Thank you. Mr. Boland, based
10 on your conversations with Mr. Ceglia, does Mr. Ceglia oppose your
11 motion?

12 MR. BOLAND: Yes.

13 MAGISTRATE JUDGE FOSCHIO: Thank you. I don't suppose,
14 without revealing an attorney-client confidence, anybody -- either
15 Mr. Argentieri or Mr. Boland -- can apprise the Court as to why?
16 And perhaps he assumed that counsel would reveal this to the Court
17 during today's hearing, but apparently he didn't think it
18 necessary to direct a written communication to the Court, either a
19 written communication from Mr. Argentieri, remaining counsel;
20 Mr. Boland, who has made the motion, still counsel of record
21 technically; or on his own to apprise the Court of this fact.

22 I'm just sort of wondering, as Mr. Snyder just pointed
23 out, had I not asked the question directly and kept proceeding,
24 how we would have ever learned as to whether Mr. Ceglia had a
25 position on the motion or not?

1 If you don't care to answer that question,
2 Mr. Argentieri, because it would potentially be a waiver of
3 attorney-client privilege, then just say so.

4 And the same regarding Mr. Boland.

5 I guess that -- it's not that I -- well, I don't know
6 what I think actually. I was about to say something and then I
7 thought better of it, so -- all right. So based on your
8 communications, both of you are affirming that Mr. Ceglia, in
9 fact, opposes the motion. Enough said on that.

10 Any comment on why Mr. Ceglia had not directed you to
11 affirmatively tell the Court that before we commenced the
12 proceedings today?

13 MR. ARGENTIERI: Your Honor, is there some heavy
14 breathing on the line? Your Honor, just to --

15 MAGISTRATE JUDGE FOSCHIO: It's some sort of a noise that
16 keeps popping up. We have no idea where it's coming from. I
17 can't -- I'm not going to apologize for it, it's not our hook-up,
18 I don't know what it is.

19 MR. ARGENTIERI: That's okay, but I can just summarize.
20 I believe Mr. Ceglia's expectation, Your Honor, was to go to court
21 in person today to maybe address the Court.

22 MAGISTRATE JUDGE FOSCHIO: Yeah, I thought he might, too,
23 because he probably could -- I guess he's got some sort of an
24 ankle bracelet restriction, but I was thinking that perhaps --

25 MR. ARGENTIERI: Right.

1 MAGISTRATE JUDGE FOSCHIO: -- Probation would let him.

2 MR. ARGENTIERI: Right. It was his personal preference,
3 but he had to, I believe, get another ankle bracelet for his house
4 detention, that it fell through.

5 And in point of fact, I asked him today if he wanted to
6 be on the telephone conference and he said he didn't have enough
7 time.

8 MAGISTRATE JUDGE FOSCHIO: Didn't have enough time?

9 MR. ARGENTIERI: So I'm not trying to -- I'm just trying
10 to tell you what our expectation was.

11 And the other matter, I didn't expect to be subpoenaed
12 in his criminal case this morning. I got subpoenaed today.
13 That's another complication. So that's all I know, Judge.

14 All I can confirm is the last conversation I've ever had
15 about this with him, he was opposed to Mr. Boland withdrawing from
16 the case, opposing the motion, and I think he can speak for
17 himself honestly.

18 MAGISTRATE JUDGE FOSCHIO: Well, when did he communicate
19 that opposition to you, if I may ask?

20 MR. ARGENTIERI: I would say over the weekend when we
21 were contemplating going to Buffalo in person.

22 MAGISTRATE JUDGE FOSCHIO: And, Mr. Boland, when did you
23 last speak to Mr. Ceglia and learn that he opposed the motion?

24 MR. BOLAND: I had a conversation with him yesterday
25 where he indicated that if the hearing had been in person and he

1 was there, that the statement he would make is he would oppose the
2 motion.

3 MR. SNYDER: Your Honor, this is Mr. Snyder again.
4 Obviously both Mr. Argentieri and Mr. Boland remain counsel of
5 record and they have an affirmative obligation to disclose this
6 information to the defendants and Mr. Ceglia, who had every right
7 to expect that his lawyers would honor their professional
8 obligations and make those disclosures to the defendants and the
9 Court.

10 And so --

11 MAGISTRATE JUDGE FOSCHIO: I'm wondering, Mr. Snyder,
12 whether the Court should direct that Mr. Ceglia advise the Court
13 formally in writing of this opposition.

14 MR. SNYDER: I'm just wondering why they can't get their
15 client on the telephone for this conference. I don't quite
16 understand that. It's been scheduled now for some time and --

17 MAGISTRATE JUDGE FOSCHIO: I suppose we could reschedule
18 the hearing, continue the hearing and require him to appear since
19 he's only a hop, skip and a jump away.

20 MR. SNYDER: Well, perhaps they could call him right now
21 as well on the phone and perhaps we can see if he's available
22 right now?

23 MAGISTRATE JUDGE FOSCHIO: Well, I guess my problem with
24 that is how would I know who I'm speaking to?

25 MR. SNYDER: Yeah. The lawyers -- the lawyers have

1 spoken to him enough times, they can probably authenticate his
2 voice and represent to Your Honor that --

3 MAGISTRATE JUDGE FOSCHIO: Well, is there any way we can
4 attempt to include him in this conference call at this point? I
5 don't know the technical limitations here or options.

6 MR. ARGENTIERI: I could try to call him now on my cell
7 phone.

8 MAGISTRATE JUDGE FOSCHIO: And can he then be plugged in
9 to this conference call on the record?

10 MR. ARGENTIERI: I think what he could do, they could
11 include him on the passcode or --

12 MR. SOUTHWELL: Mr. Argentieri? Mr. Southwell here. All
13 you need to do is give him the dial-in information, which I'll
14 read to you right now if you have it, give him that.

15 MR. ARGENTIERI: I have that. It's 877-492-4011,
16 passcode 2123513981.

17 MR. SOUTHWELL: Then press pound.

18 MR. ARGENTIERI: Yeah.

19 MR. SOUTHWELL: If you give him that information, he can
20 be hooked in right now and we can all hear him.

21 MAGISTRATE JUDGE FOSCHIO: All right. Well, why don't we
22 do that? Can you take care of that, Mr. Argentieri? We'll just
23 sort of hold until you tell us that he's on the line here.

24 MR. ARGENTIERI: Okay. Let me -- I'll try, hang on.

25 Paul Argentieri here. I got ahold of him, he's going to

1 call in, Judge.

2 MAGISTRATE JUDGE FOSCHIO: Oh, good.

3 THE PLAINTIFF: Hello? Yeah, I'm here.

4 MR. ARGENTIERI: Your Honor, for the record, I can state
5 to the Court -- and I think Mr. Boland can as well -- that
6 Mr. Ceglia is on the phone and I recognize his voice.

7 MAGISTRATE JUDGE FOSCHIO: Okay, are you Paul D. Ceglia?

8 THE PLAINTIFF: Yes, sir.

9 MAGISTRATE JUDGE FOSCHIO: This is Magistrate Judge
10 Foschio. I think you know who I am, but you haven't heard my
11 voice.

12 THE PLAINTIFF: I do indeed, Your Honor.

13 MAGISTRATE JUDGE FOSCHIO: Pardon me?

14 THE PLAINTIFF: I do indeed, Your Honor.

15 MAGISTRATE JUDGE FOSCHIO: Thank you. And where are you
16 located right at the moment?

17 THE PLAINTIFF: I'm at my home in Wellsville.

18 MAGISTRATE JUDGE FOSCHIO: Okay. And Mr. Argentieri just
19 called you to invite you to participate in this conference call?

20 THE PLAINTIFF: That's correct, Your Honor.

21 MAGISTRATE JUDGE FOSCHIO: You're aware of why we're
22 here, which is that Mr. Boland, who was one of your counsel of
23 record in this case, Ceglia vs. Zuckerberg/Facebook, has made a
24 motion to withdraw.

25 You've received a copy of those papers?

1 THE PLAINTIFF: I have.

2 MAGISTRATE JUDGE FOSCHIO: The question is, do you oppose
3 Mr. Boland's motion to withdraw?

4 THE PLAINTIFF: Yes, I do.

5 MAGISTRATE JUDGE FOSCHIO: And that would be because you
6 feel he's needed to prosecute this case going forward?

7 THE PLAINTIFF: I believe no one knows this case and
8 the details of it like Mr. Boland does. And that there's only
9 one reason that he is -- doesn't want to continue in this case.

10 MAGISTRATE JUDGE FOSCHIO: I see. And the fact that
11 Mr. Argentieri presently would remain as your attorney, that is
12 not sufficient to protect your interests in prosecuting the case?

13 THE PLAINTIFF: Well, no disrespect to Mr. Argentieri,
14 but he doesn't have a handle on the details of the case.

15 MAGISTRATE JUDGE FOSCHIO: Mm-hmm. Okay. And would the
16 reasons that Mr. Boland wants to depart from the case be the ones
17 that he's articulated in his letter to the Court that you received
18 later, the October 30th letter, is that what you're referring to
19 as the reasons for him wanting to withdraw?

20 THE PLAINTIFF: The *in camera* letter?

21 MAGISTRATE JUDGE FOSCHIO: Correct.

22 THE PLAINTIFF: Yes, those are the reasons.

23 MAGISTRATE JUDGE FOSCHIO: Okay.

24 THE PLAINTIFF: That is the only reason that Mr. Boland
25 has communicated to me that he wishes to withdraw.

1 MAGISTRATE JUDGE FOSCHIO: But notwithstanding those
2 reasons, you still want him to stay in this case; is that correct?

3 THE WITNESS: That is correct, Your Honor. I appreciate
4 the fear for his own safety he has, and the threats that have been
5 made against him, but obviously even worse has happened to me.

6 And, you know, I think that at this point I really need
7 to have an attorney confident in the details to be able to
8 proceed.

9 MAGISTRATE JUDGE FOSCHIO: Okay. And you have no
10 intentions of looking elsewhere for another lawyer then at this
11 time?

12 THE PLAINTIFF: Your Honor, because of Orin Snyder and
13 Alex Southwell's friend in the Southern District prosecutor's
14 office, I'm not even allowed to leave my home without permission.
15 And it's incredibly difficult to do anything, let alone continue
16 to now search for new counsel in the civil case, while I'm
17 simultaneously trying to search for new counsel on the criminal
18 indictment that's obviously just based on the submission of the
19 lawsuit.

20 MAGISTRATE JUDGE FOSCHIO: Okay. Well, I don't want you
21 to be saying too much about the merits of the case or the criminal
22 matter on the record here. I'm just simply focusing on your
23 reasons for opposing Mr. Boland 's wish to withdraw.

24 And I think you've stated them -- and I guess I'm not
25 trying to put words in your mouth in any way, shape or form, and

1 if you don't want to answer the question, just say so -- is it
2 fair to say that if neither Mr. Boland or Mr. Argentieri were in
3 the case you would be forced to represent yourself going forward
4 the rest of the case or you can't really answer that at this
5 point?

6 That's probably not a fair question because you really
7 haven't thought about it.

8 THE PLAINTIFF: Yeah, I'm not too sure.

9 MR. SNYDER: Your Honor, this is Mr. Snyder, may I be
10 heard?

11 MAGISTRATE JUDGE FOSCHIO: Please.

12 MR. SNYDER: In light of what we've heard today, at this
13 point Facebook is withdrawing its consent to the withdrawal
14 without prejudice until such time as we have the full facts about
15 the purported reasons for the motion, particularly in light of the
16 plaintiff's opposition to the motion.

17 Just to complete the record, Your Honor, I feel it is
18 necessary just to respond briefly to the suggestion somehow that
19 friends of mine and Mr. Southwell were in any way responsible for
20 the decision by the United States Department of Justice to charge
21 Mr. Ceglia with fraud, which the Court has heard.

22 Those charges were independent decisions of the United
23 States Department of Justice and indeed the federal prosecutors,
24 the United States District Court in Manhattan, Judge Colleen
25 McMahon, that the Government's proof was overwhelming based on the

1 Government's extensive investigation. And now a sitting grand
2 jury in the Southern District of New York duly empaneled has
3 brought an indictment against Mr. Ceglia.

4 So just to complete the public record, the notion
5 somehow that Mr. Ceglia's prosecution was the product of any
6 supposedly friendship is both disrespectful of the United States
7 Department of Justice's professional responsibility, the grand
8 jury sitting in the Southern District of New York, and I just
9 wanted to make sure that the record is clear on that point.

10 Going forward, I would suggest, Your Honor, respectfully
11 that perhaps the best procedure is to have us hold in abeyance the
12 request for the withdrawal until such time as we can hopefully get
13 a copy of the two Boland letters. If, in fact, those reflect a
14 purported fear for safety and threats, we have reason to believe
15 that misrepresentations to the Court might be overblown,
16 exaggerated or worse and we -- if the content in those letters are
17 disclosed to us, as we think they should be under controlling
18 precedent, then we and the Court -- we and maybe the Court want an
19 opportunity to assess the voracity and legitimacy of those claims
20 and the withdrawal request in light of the plaintiff's opposition.

21 MAGISTRATE JUDGE FOSCHIO: Okay.

22 MR. SNYDER: And now we understand the basis of the
23 withdrawal request to be --

24 MAGISTRATE JUDGE FOSCHIO: Thank you. All right, I'm not
25 asking --

1 MR. ARGENTIERI: Judge Foschio, is it possible for me to
2 make a statement?

3 MAGISTRATE JUDGE FOSCHIO: Who is speaking to me?

4 MR. ARGENTIERI: Paul Argentieri.

5 MAGISTRATE JUDGE FOSCHIO: Go ahead, Mr. Argentieri.

6 MR. ARGENTIERI: Just briefly, Your Honor. Since
7 Mr. Snyder felt compelled to complete the record, I just
8 want -- if he would express on the record, does he have any
9 other evidence of fraud in this case other than what they have
10 filed?

11 MAGISTRATE JUDGE FOSCHIO: I don't know that that's
12 relevant to the motion or the request for disclosure of the Boland
13 letters, which I thought we had already dealt with, but --

14 MR. ARGENTIERI: Okay.

15 MAGISTRATE JUDGE FOSCHIO: -- I think if I had to guess,
16 I think it's -- is there an objection to that, to that query,
17 Mr. Snyder? Excuse me, one at a time.

18 MR. ARGENTIERI: If he wants to complete the record, I
19 don't know what he means by that, but the only thing we have filed
20 in this record from Facebook and/or Mark Zuckerberg's attorneys
21 are expert opinions --

22 MAGISTRATE JUDGE FOSCHIO: I think, Mr. Argentieri --

23 MR. ARGENTIERI: -- expert witness affidavit. And other
24 than Mark Zuckerberg's declaration, we have no other evidence of
25 fraud in this case other than what they've stated in their papers.

1 MAGISTRATE JUDGE FOSCHIO: I think, Mr. Argentieri --

2 MR. ARGENTIERI: And in almost two years of litigation or
3 in excess of two years, none of the attorneys -- any of the
4 attorneys for the defense had ever contacted me and indicated to
5 me, other than their filings.

6 So I just want to be clear on the record, if
7 they're going to be clear on the record about any alleged
8 friendship with the District Attorney's Office down there, I just
9 want to know if Mr. Snyder, Mr. Southwell, anybody there has any
10 other evidence other than the filing, I want them to come forward
11 now.

12 MAGISTRATE JUDGE FOSCHIO: Well, not to interpret or
13 speak in any way for -- and he certainly doesn't need any help
14 from anybody, Mr. Snyder -- I think I understood him to simply
15 want to not leave the impression based on Mr. Ceglia's
16 implication, shall we say, regarding some influence between the
17 defendants and the U.S. Attorney's Office.

18 Mr. Snyder, seemed to me, was simply trying to not leave
19 the record subject to any ambiguities. Everybody has seen the --

20 MR. ARGENTIERI: I guess just to hold Mr. Snyder to his
21 public statement, that's fine, he doesn't have any friendship with
22 the district attorney.

23 But he's also made public statement --

24 MAGISTRATE JUDGE FOSCHIO: No, you're welcome to make
25 whatever comments you want, Mr. Argentieri. They're on the

1 record, they're being recorded. And if -- I'm just telling you
2 that I understand what you're saying.

3 If Mr. Snyder wants to respond to it, he can, but I
4 offhand don't think it's particularly germane to the merits of the
5 motion. If Mr. Snyder feels he wants to respond to your question,
6 he's welcome to do so; or if he chooses not, I'm not here to
7 compel him.

8 Mr. Snyder, do you want to respond to Mr. Argentieri's
9 question?

10 MR. SNYDER: No, Your Honor. Thank you.

11 MAGISTRATE JUDGE FOSCHIO: Thank you. All right, enough
12 said.

13 What I'm getting here -- Mr. Ceglia, you're still on the
14 line?

15 THE PLAINTIFF: I am, Your Honor.

16 MAGISTRATE JUDGE FOSCHIO: Good. And I'm not going to
17 query you anymore about this issue. I think we have enough for
18 the moment, especially being mindful of the pending criminal
19 matters in the Southern District, I'm not here to make your life
20 anymore complicated than it is.

21 But I do have to deal with this motion to withdraw on
22 the merits, and it's an unusual circumstance to have such a
23 motion, especially in such a major case where the -- where there's
24 a dispute between the represented party and the attorney seek ing
25 to withdraw.

1 Certainly it's not something I expected when the motion
2 came in, but we'll deal with it. But to deal with it in an
3 orderly fashion, subject to Mr. Boland or Mr. Argentieri's
4 comments -- Mr. Boland, if you feel the need to, you know, pipe up
5 here and say something at this point, feel free.

6 My inclination would be --

7 MR. BOLAND: I do, Your Honor, when you're done with your
8 part --

9 MAGISTRATE JUDGE FOSCHIO: What I'm about to say will not
10 in any way -- should not be interpreted by you as cutting you off,
11 so as soon as I say what I want to say, then I'll let you have the
12 floor.

13 My inclination would be to hold the motion in abeyance,
14 at least pending the time required to dispose of the
15 plaintiff's -- the defendants' request for disclosure of the two
16 letters that we've been talking about.

17 And this is the more technical question -- and to allow
18 the defendants, as Mr. Snyder just, I think, clearly said, to
19 withdraw without prejudice their statement in -- what docket
20 number was it? Somewhere we have a document --

21 THE CLERK: I think it's 595.

22 MAGISTRATE JUDGE FOSCHIO: 595, Sandra? Are you sure?

23 MR. SNYDER: 595, Your Honor.

24 MAGISTRATE JUDGE FOSCHIO: 595, in which the defendants
25 state they have no opposition to the motion to withdraw, subject

1 to the condition that it not -- that such withdrawal not involve
2 any further -- any delay in the future proceedings in the case.

3 And then I suppose once the Boland letter disclosures
4 are resolved either way, I would put a new scheduling order on
5 requesting the defendants' response to the motion to withdraw and
6 we would go from there, schedule a hearing -- further hearing
7 and -- well, I'm not even sure I would need to schedule a further
8 hearing. I think probably at that point we might just take it
9 under advisement or consider some oral argument if it was
10 requested. That's my inclination.

11 Mr. Boland, do you want to comment on that, as well as
12 whatever else you were ready to provide to us?

13 MR. BOLAND: Yes, Your Honor. Thank you.

14 This is partially related to Mr. Snyder's comments about
15 whether my concerns or my reasons for withdrawing are exaggerated
16 or not as serious as I think they are or whatnot.

17 And with all due respect to the Court and Mr. Snyder, it
18 won't matter to me whether a third-party assesses my reasons that
19 I want to withdraw and finds them -- that my concerns, my personal
20 and professional concerns are overblown or exaggerated, et cetera.

21 I have to deal with, you know, my own life and my own
22 career and my own existence over here, and I can't sort of
23 outsource my decision-making to third parties who think that I'm,
24 you know, my concerns are -- shouldn't be taken as seriously by me
25 as they are.

1 So I think that there may be some wasted briefing and
2 back and forth going on because I am not -- I won't be changing my
3 opinion that I need to withdraw because I can no longer
4 professionally and ethically represent Mr. Ceglia's interest above
5 my own personal interest as I expressed to the Court.

6 And, therefore, I don't know that the Court really needs
7 us to go through briefing the issue and any attempts by the
8 defendants to constrain me to continue representing Mr. Ceglia
9 because my reasons are my reasons, and I'm not going to be moved
10 by other people's opinion that those reasons aren't serious enough
11 to justify withdrawal.

12 MAGISTRATE JUDGE FOSCHIO: I don't think --

13 MR. BOLAND: Other than that, Your Honor, the steps you
14 went through, I don't have any objection to what you're saying
15 about how to step through the issues. It seems reasonable to me,
16 given my comments that I just said.

17 MAGISTRATE JUDGE FOSCHIO: Thank you.

18 MR. SNYDER: Your Honor, may I be heard just for a
19 moment? I think it will be helpful to the Court. The question of
20 withdrawal, of course, is within the discretion of the Court, and
21 the professional rules do not allow attorneys by reason itself
22 held for unilateral conduct to withdraw.

23 Mr. Boland said he's not going to be swayed by any third
24 party. I assume he will be swayed by a third-party if it is a
25 United States District Court for the Western District of New York.

1 It's our view, Your Honor, our concern has been from the
2 outset delay, and our motions to dismiss are fully briefed and we
3 would have hoped and wished for argument on that this month.

4 So the plaintiff -- the plaintiff and his counsel are
5 now achieving the very delay that we feared. So what we
6 respectfully request is that the Court, on a very tight
7 briefing schedule, direct the parties to -- direct Mr. Boland,
8 I would say now less than five days now that we have this new
9 information, less than seven days to set forth the reasons
10 under the local rules and Second Circuit law why withdrawal
11 should be permitted -- I'm sorry, why the *in camera* submission
12 should stand.

13 We will reply in a handful of days. Once the Court
14 decides that, if those documents are disclosed, we then will
15 within three days thereafter inform the Court in writing of our
16 position on the motion to withdraw, and then Mr. Ceglia should
17 submit in writing, you know, his position with respect to
18 Mr. Boland.

19 Mr. Boland can have an opportunity to be heard on the
20 withdrawal motion and the Court can then rule. And it may well be
21 that Mr. Boland, like many attorneys, will be required to continue
22 his representation and not be able to slip out the back at the
23 11th hour causing delay and disruption to this case.

24 This may be a case -- this may be the first motion, Your
25 Honor, perhaps where the plaintiff and the defendant are aligned.

1 MAGISTRATE JUDGE FOSCHIO: Thank you.

2 MR. ARGENTIERI: Judge, Paul Argentieri for the record.
3 We don't want any delay on the Court's recommendation on the
4 motion to dismiss. So I hope the Court doesn't interpret that
5 that's any motivation here with Mr. Boland. We have no -- no
6 reason to have any delay.

7 MR. SNYDER: Well, I don't think Mr. Boland will be -- I
8 mean, the question is if the Court would set argument for next
9 week, who would argue that motion for the plaintiff? That's why
10 we need the representation issue resolved.

11 MAGISTRATE JUDGE FOSCHIO: Well, I guess --

12 MR. ARGENTIERI: (Indiscernible).

13 MAGISTRATE JUDGE FOSCHIO: Couldn't hear you,
14 Mr. Argentieri. Would you speak up clearly, please?

15 MR. ARGENTIERI: With all due respect, Judge -- well, I
16 mean, Judge, you just heard about oral argument. I don't know if
17 the Court really requires it, but I mean, I just want to state on
18 the record we are and we have been prepared since September -- our
19 position in the case, unless Mr. Ceglia tells me otherwise and
20 Mr. Boland, we're prepared to have the Court make a decision on
21 the motion to dismiss. Absolutely.

22 MAGISTRATE JUDGE FOSCHIO: Yeah, I'm sure you are.
23 Mr. Boland was anticipating oral argument. I'm not here to say
24 one way or the other whether the Court intended to schedule oral
25 argument. We certainly didn't intend to schedule it for today, as

1 the defendants were hoping.

2 But putting aside whether the Court will, in fact,
3 schedule any oral argument on the defendants' motions, both for
4 judgment on the pleadings, i.e., statute of limitations, laches
5 issues, number one; and, two, the motion to dismiss based on fraud
6 is yet to be seen.

7 I think all Mr. Snyder was trying to point out is that
8 given where matters stand here, had the Court said hypothetically,
9 for the sake of discussion and illustration, that it wants to have
10 oral argument within the next two weeks, given the situation that
11 we're facing here, who would make the plaintiff's presentation?
12 Obviously, Mr. Ceglia wants Mr. Boland to do so.

13 But, yet, we have this motion to withdraw. So I think
14 that's all Mr. Snyder was trying to point out. I don't think
15 he --

16 MR. ARGENTIERI: Okay. Well, I just wanted to push back
17 on him that we're trying to delay, we're not. We're not trying to
18 delay.

19 MAGISTRATE JUDGE FOSCHIO: Well, in that -- yes, thank
20 you for that clarification.

21 And in that vain, there is one thing that I also want to
22 address while we're all together here and then we can just go for
23 the sake of completeness, and that is these documents which just
24 recently were filed with the Court -- do I have them in front of
25 me, Sandra? I think not.

1 They just came in, I think it was, unfortunately I don't
2 have them -- the documents that just came in from the plaintiff
3 addressing the merits. They just came in, the chart, the
4 summarization, it was a rebuttal document.

5 The defendants wanted to know, because they said that
6 the format of the documents looked very much like Mr. Boland's
7 previous submissions and they -- they did in one of their
8 documents allude to the fact -- to the question of whether or not,
9 despite the motion to withdraw, Mr. Boland had -- was the author
10 of those documents; and whether or not going forward, assuming the
11 motion to withdraw were to be granted, which now of course it's
12 being put aside as discussed, these -- the Court should understand
13 that anything that -- there was a document that Mr. Argentieri's
14 name is on alone, and I'm sorry I don't have it on the bench. My
15 law clerk just went to get it so I can be more specific about what
16 I'm referring to.

17 But it just was filed either yesterday or today, but it
18 only had Mr. Argentieri's name on it. And I think the point that
19 the defendants were striking at, which is what I'm trying to
20 strike at here, which I don't have the document in front of me,
21 somebody knows what I'm talking about, I think the lawyers do, was
22 authored by Mr. Boland or by Mr. Argentieri.

23 So that the concern would be that what's going to happen
24 here hypothetically -- yes, it's a declaration of Mr. Argentieri,
25 docket number 609, which is a -- which purports to be a

1 declaration in response to the motion to dismiss for statute of
2 limitations violations.

3 And then 610, which is a declaration of Mr. Argentieri
4 in sur-rebuttal to the defendants' reply to plaintiff's -- to
5 their motion to dismiss for fraud on the Court, which contains a
6 recapitulation of some recent cases defining the concept of fraud
7 on the Court. And then attaches a very detailed summarization of
8 the defendants' and expert -- defendants' and plaintiff's expert
9 reports.

10 And I think the question is whether these documents were
11 authored by Mr. Argentieri, or were authored by Mr. Boland and
12 submitted by Mr. Argentieri? And whether if Mr. Boland were to be
13 allowed to withdraw, the Court would understand and the parties
14 would understand or would expect -- not expect, but that -- would
15 these documents be authored only by Mr. Argentieri, thus, I don't
16 want to say disguising, but masking the mask that they were and,
17 in fact, the work product of Mr. Boland.

18 That's a long question. But I think it's pretty clear
19 what the Court's attempting to get at. Can you explain,
20 Mr. Argentieri, a little more about that? I mean, if Mr. Boland
21 authored the document, even though the motion was made, it's still
22 pending, he's still counsel of record, if he did author the
23 document, why isn't his name on the document?

24 MR. ARGENTIERI: I don't believe he authored the
25 document, Your Honor.

1 MAGISTRATE JUDGE FOSCHIO: Oh, all right. Well, that's
2 all I needed to know, that you authored the document.

3 MR. SNYDER: Your Honor --

4 MR. ARGENTIERI: Wait a minute. Hang on, Mr. Snyder.

5 Just so the Court understands, there is a complication
6 with me, though. I mean, I was subpoenaed this morning, so
7 there's some other ancillary issues that are, quite frankly, new
8 to me how to respond to --

9 MAGISTRATE JUDGE FOSCHIO: Well, let me ask you -- just
10 ask you directly, it's a very simple question and I don't think it
11 intrudes on any privileges. Docket 610, it's your declaration,
12 and attached thereto is a so-called dueling experts' table, and
13 all I'm asking is who drafted the declaration and who prepared the
14 dueling experts' table?

15 Because Mr. Ceglia just said that it's Mr. Boland who
16 has the most detailed grasp of the facts of the case and I'm just
17 simply asking because the defendants are concerned as to how they
18 should -- I mean, these documents do look like documents that
19 were -- have been prepared in the past by Mr. Boland.

20 So can you tell me who prepared document 610, as well as
21 the attached dueling experts' table?

22 MR. BOLAND: Your Honor, this is Dean Boland. I can tell
23 you I didn't prepare that expert table and I didn't prepare
24 Mr. Argentieri's declaration. So that resolves those two items.

25 MAGISTRATE JUDGE FOSCHIO: Okay. So 610 was prepared

1 only by Mr. Argentieri, correct, Mr. Argentieri?

2 MR. ARGENTIERI: Well, when you say "only," Judge, I
3 mean -- I don't know how to really respond to that. It's attorney
4 work product.

5 MAGISTRATE JUDGE FOSCHIO: Well, did you have an
6 assistant?

7 MR. ARGENTIERI: I can't state on the record that I
8 drafted every word and crafted every sentence strictly by myself.
9 I'm not going to tell the Court that, no.

10 MAGISTRATE JUDGE FOSCHIO: Let's put it this way:
11 Mr. Boland had no part in preparing document number 610 or the
12 attachment; is that what you're telling me?

13 MR. ARGENTIERI: I think Mr. Boland can speak for
14 himself.

15 MAGISTRATE JUDGE FOSCHIO: Well, no, I'm asking.

16 MR. BOLAND: I didn't draft either one of those
17 documents, Your Honor, at all and I had no role in writing them or
18 whatever.

19 MAGISTRATE JUDGE FOSCHIO: So Mr. Boland --

20 MR. BOLAND: I was aware those were going to be filed for
21 sure, there was conversation between me and Mr. Argentieri, but I
22 was not a draftsman of those --

23 MAGISTRATE JUDGE FOSCHIO: Okay. And --

24 MR. BOLAND: -- the declaration and attachments that he
25 provided, that I had no role in drafting.

1 MAGISTRATE JUDGE FOSCHIO: All right. And,
2 Mr. Argentieri, you're confirming what Mr. Boland just said,
3 right?

4 MR. ARGENTIERI: Yes.

5 MAGISTRATE JUDGE FOSCHIO: Oh, okay. All right. So I'm
6 just making a ditto there, that this was your work product. No,
7 that answers the question. I didn't -- I don't need to make a
8 big -- I'm not trying to make a big deal out of it.

9 We're just trying to clarify that if Mr. Boland is
10 allowed to withdraw from the case, he is, in fact, going to no
11 longer be involved in preparing any papers or giving any advice
12 and that's it. It's not a situation that --

13 MR. ARGENTIERI: No, I understand.

14 MAGISTRATE JUDGE FOSCHIO: Hello? Go ahead.

15 MR. ARGENTIERI: Yes, I understand that.

16 MAGISTRATE JUDGE FOSCHIO: Is that correct?

17 MR. ARGENTIERI: Yes, I understand that, Judge. If he is
18 allowed to withdraw, he can't do any more work. I understand
19 that.

20 MR. SNYDER: Although -- Your Honor, this is Mr. Snyder.
21 Mr. Boland does appear to have filed document 597 entitled
22 Emergency Motion For 30 Day Extension. It's on his -- although
23 it's signed, again, by Mr. Argentieri, it's on -- it's
24 Mr. Boland's distinct writing style and the thoughts that he has
25 used throughout the case, which is different than responses on the

1 only document that Mr. Argentieri seems to have written, which was
2 on his letterhead, document 606.

3 I'll also note for the record, Your Honor,
4 Mr. Argentieri filed the declaration in opposition to our motion
5 for judgment on the pleading one day late on November 26th, 2012.
6 The deadline pursuant to the Court's scheduling order granted a
7 modest extension, which was document 607.

8 And not only was the filing late, but the declaration
9 and Certificate of Service were false. And Mr. Argentieri in that
10 certification falsely stated that they were filed on the 25th in a
11 timely fashion, when they were not.

12 MR. ARGENTIERI: It's my understanding, Judge, that
13 throughout the course of this case that if the order fell on a
14 Sunday, that you granted us into Monday. So I -- that was my
15 understanding and the Court's practice actually.

16 MR. SNYDER: That doesn't explain the false
17 certification. If that's the practice, he should have dated it
18 the 26th.

19 MR. ARGENTIERI: With all due respect, I know Mr. Snyder
20 wants to be the judge in the case, but I only answer questions to
21 the Court, not Mr. Snyder.

22 MAGISTRATE JUDGE FOSCHIO: Actually, Mr. Argentieri, I
23 did expect it to be filed on Sunday because we were looking for a
24 quick turn. The leniency of providing for an extra day has always
25 been on an *ad hoc* basis as far as I recall. But that's beside the

1 point.

2 I'm expecting the defendants to reply. You're going to
3 be replying, Mr. Snyder, in due course, right?

4 MR. SNYDER: Yes, December 3, Your Honor.

5 MAGISTRATE JUDGE FOSCHIO: Thank you. All right. We
6 don't need to go into that any farther, I think.

7 Well, I think I've clarified what I wanted to and I
8 suppose still the unanswered question is, why is it that the font
9 of these documents looks so reminiscent of Mr. Boland's document
10 preparation style compared to Mr. Argentieri's, but I'm sure
11 there's some --

12 MR. BOLAND: I can explain that, Judge.

13 MAGISTRATE JUDGE FOSCHIO: You can?

14 MR. BOLAND: Yes, this is Mr. Boland.

15 MAGISTRATE JUDGE FOSCHIO: Yeah, go ahead.

16 MR. BOLAND: Like many law offices, we are attempting to
17 be as efficient as possible, and I set up templates when I first
18 started working on this case that I shared with everyone,
19 including my client, involved in the case.

20 So everything that's being prepared or even ideas for
21 motions or responses are being prepared, all on the team have the
22 identical template.

23 MAGISTRATE JUDGE FOSCHIO: Well, there you go.

24 MR. BOLAND: That's the extent, because we didn't want
25 to be working on multiple, different documents. So it's very

1 common that we work on a document jointly. Someone, sometimes
2 not even me when I was fully engaged, would make the document
3 into its final form, and then Mr. Argentieri and I would review
4 it to make sure we were comfortable since our signatures were on
5 it.

6 But use of a template explains why Mr. Argentieri or
7 myself or any future lawyer could file things and they would all
8 look the same.

9 MAGISTRATE JUDGE FOSCHIO: Thank you. Well, I'm sure
10 Mr. Snyder is happy to receive that explanation, as is the Court.
11 Thank you.

12 All right, I think unless somebody has something
13 important to tell the Court before we recapitulate how we're going
14 to handle the motion to withdraw -- anybody for the plaintiff,
15 either Mr. Boland, Mr. Argentieri or Mr. Ceglia, do you have
16 anything further to add at this time? None?

17 Mr. Snyder for the defendants?

18 MR. SNYDER: No, thank you, Your Honor.

19 MAGISTRATE JUDGE FOSCHIO: Okay. So to recapitulate, we
20 are holding the motion to withdraw in abeyance.

21 We are allowing the defendants to withdraw their
22 document in which they state that they are not in opposition to
23 the motion pending the Court's resolution of the -- I'll call it
24 the defendants' request for disclosure.

25 And following that we will -- that put in place a

1 schedule calling for the defendants' resubmission, if you will, or
2 refiling of its response to the motion to withdraw and a brief
3 opportunity to reply by Mr. Boland and/or Mr. Argentieri or
4 presumably Mr. Ceglia.

5 And I guess I'll think about whether or not to require
6 Mr. Ceglia to state in writing to the Court at that time that his
7 then position remains the same, i.e., to say the one he has stated
8 on the record, that he is opposed to the motion so that he has a
9 further opportunity to -- so that we have at that point before I
10 render a decision his actual position at that time, which would be
11 the most recent statement that we can obtain from him
12 conveniently, without going through the extra work of bringing him
13 in to the courthouse for an on the record statement.

14 All right. And the --

15 MR. BOLAND: Your Honor, this is Dean Boland. I have one
16 administrative question. We talked early on about we providing
17 something that could be docketed demonstrating compliance with the
18 rules that I had served on Mr. Ceglia --

19 MAGISTRATE JUDGE FOSCHIO: Right.

20 MR. BOLAND: -- for the *in camera* submission I made and
21 the supplement to it.

22 MAGISTRATE JUDGE FOSCHIO: Right.

23 MR. BOLAND: What format -- if I just draft a letter --
24 I'm sorry, a declaration, and file that on the docket, would that
25 be a suitable confirmation for the Court?

1 MAGISTRATE JUDGE FOSCHIO: I'm not even sure it's
2 necessary, given Mr. Ceglia's confirmation.

3 Mr. Ceglia, you are confirming that you have received a
4 copy of the -- of Mr. Boland's October 30th letter, correct?

5 THE PLAINTIFF: That's correct, Your Honor.

6 MAGISTRATE JUDGE FOSCHIO: Yes. But you have not
7 received -- and I guess this is the detail that I overlooked --
8 you have not received a copy of his letter dated November 27th
9 that the Court has just received?

10 THE PLAINTIFF: No -- well, I haven't checked my e-mail
11 in the last few hours, but I haven't read it.

12 MR. BOLAND: It's in his e-mail box. It's an attachment
13 to an e-mail that was sent to him just prior to the call
14 beginning, Your Honor.

15 MAGISTRATE JUDGE FOSCHIO: Oh, okay. So could you --
16 then if you can make your declaration cover both letters, please?
17 So that you're in full compliance --

18 MR. BOLAND: Yes.

19 MAGISTRATE JUDGE FOSCHIO: -- so that we don't have a
20 defect, a technical defect, in my reaching the merits of the
21 motion as required by Rule 83.2?

22 All right, so cover both letters, please.

23 Mr. Ceglia, it should be in your e-mail box. If it's
24 not and you can't access it, then please contact Mr. Boland and
25 ask him to do something else -- hard copy or snail mail, whatever

1 it takes, okay?

2 THE PLAINTIFF: Okay.

3 MAGISTRATE JUDGE FOSCHIO: Thank you, Mr. Ceglia.

4 All right, there being nothing further, then I think --
5 unless I have overlooked something, I appreciate everybody's
6 patience and helpful responses to clarify the various issues that
7 have arisen and we'll proceed as directed, and we are adjourned.

8 Bye-bye.

9 (WHEREUPON, the proceedings adjourned at 3:28 p.m.)

10 * * *

11 CERTIFICATE OF TRANSCRIBER

12

13 In accordance with 28, U.S.C., 753(b), I certify that
14 this is a true and correct record of proceedings from the official
15 electronic sound recording of the proceedings in the United States
16 District Court for the Western District of New York before the
17 Honorable Leslie G. Foschio on November 27th, 2012.

18

19 S/ Christi A. Macri

20 Christi A. Macri, FAPR-RMR-CRR-CRI
21 Official Court Reporter
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